IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

Bail Appl..No. 4545 of 2007()

CRIME NO. 353/06 OF MEDICAL COLLEGE POLICE STATION

.....

PETITIONER : 5TH ACCUSED:

VINAYAN, AGED 22 YEARS, S/O.VIDYADHARAN, MELEVILAYI VEEDU, CHENTHY, CHENTHY MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.S.RAJEEV
SRI.K.K.DHEERENDRA KRISHNAN

RESPONDENTS: COMPLAINNT:

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. (CRIME NO.353/2006 OF MEDICAL COLLEGE POLICE STATION).

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 4545 of 2007

- -

Dated this the 30th day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner is the 5th accused. He, along with the co-accused, faces allegations in a crime which was initially registered, inter alia, under Section 395 I.P.C. and the provisions of the Explosive Substances Act. The crux of the allegation is that when the defacto complainant was proceeding on a two wheeler on 5.9.06 at about 10.15 p.m. the petitioners, who happened to see him accidentally at that place and time, on account of prior animosity attacked the defacto complainant. In the course of such attack the purse containing money of the defacto complainant fell down and the same was allegedly removed. In the F.I.R. three persons are named. There is a specific allegation that there are others also involved in the crime. In the course of investigation the police have come to the conclusion that altogether there were only five accused persons, who indulged in the culpable overt acts, eventhough there were a large number of people available in the spot. The petitioner was arrayed as 5th accused as per report dt. 9.10.2006. The case diary shows that after interrogating the other

witnesses, who were available in the scene, the involvement of the petitioner and the 4th accused ascertained. Investigation is in progress. The petitioner has not been arrested so far. Accused 1 to 3 have subsequently been arrested. Their statements have been recorded. Their confession statements also indicate the involvement of the petitioner.

2. The learned counsel for the petitioner submits that the allegations are totally false. The petitioner is a person, who resides in the neighbourhood and in that capacity well known to the defacto complainant. The learned counsel tries to take advantage of the fact that the petitioner has not been named in the F.I.R. He further points out that though the report dt. 9.10.06 is alleged to have been filed to include the petitioner in the array of accused, the petitioner had no information about the said report and the petitioner has come to know that the said report had reached the court only in May, 2007. In these circumstances directions under Section 438 Cr.P.C. may be issued in favour of the petitioner, it is prayed.

3. The learned Prosecutor opposes the application. In the nature of the allegations the Prosecutor was requested to place the case diary after flagging the relevant pages. This court felt that it must be ascertained whether allegations were raised against the petitioner and the 4th accused on 9.10.06 itself or it was a subsequent inclusion malafide.

4. I shall not embark on a detailed discussion on the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that perusal of the case diary conveys to me that the contention that the petitioner and the co-accused have been arrayed as accused only in May, 2007 does not appear to be convincing at this stage. I am satisfied that there are no circumstances which can persuade this Court to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

tm